BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of New Rules I through VII, the amendment of ARM 37.88.101, and the repeal of ARM 37.86.3701, 37.86.3702, 37.86.3705, 37.86.3706, 37.86.3707, and 37.86.3715 pertaining to targeted case management for youth with serious emotional disturbance	)))))))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On November 26, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-460 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 2434 of the 2008 Montana Administrative Register, Issue Number 22.

2. The department has adopted New Rule I (37.87.802), II (37.87.805), IV (37.87.823), V (37.87.809), and VI (37.87.807) as proposed. The department has amended and repealed the above-stated rules as proposed

3. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE III (37.87.808) TARGETED CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, AUTHORIZATION REQUIREMENTS (1) To be reimbursed, targeted case management services for youth with SED must be authorized by the department or its designee ~~prior to the delivery of services~~ via an authorization process as outlined below.

(2) through (5) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, MCA

RULE VII (37.87.903) MEDICAID MENTAL HEALTH SERVICES FOR YOUTH, AUTHORIZATION REQUIREMENTS (1) Mental health services for a Medicaid youth under the Montana Medicaid program will be reimbursed only if the following requirements are met:

(a) the youth, defined in ARM ~~37.87.103~~ 37.87.102, has been determined to have a serious emotional disturbance as defined in ARM 37.87.303;

(b) through (2)(b) remain proposed.

(3) Prior authorization by the department or its designee is required for the following services for a Medicaid recipient who is a youth:

(a) remains as proposed.

(b) targeted case management in excess of 120 units of service per state fiscal year and in accordance with ARM 37.87.808;

(c) through (9) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: We disagree with the rule adding authorization requirements implemented in 2007 to case management services.

RESPONSE #1: Authorization requirements were implemented in August 2007 in ARM 37.88.101, Medicaid Mental Health Services, Authorization Requirements. Sixty units of targeted case management (TCM) services were allowed as an initial or pass through authorization and requests for additional units were to be submitted to the utilization review contractor. The department is not establishing or expanding authorization requirements with proposed Rule VII (37.87.903). On the contrary, by increasing the number of units on the pass through or initial authorization to 120, it is doubling the initial number of TCM services that can be provided before it is necessary to request authorization for additional units. Proposed Rule VII (37.87.903) is intended to affect providers positively by increasing the initial number of units authorized, thus, decreasing the number of authorization requests needed.

COMMENT #2: We disagree with the addition of authorization requirements to administrative rule. By including these requirements in proposed Rule III (37.87.808), the Children's Mental Health Bureau (CMHB) will have to go through a rule amendment process any time there is a change to the authorization requirements.

RESPONSE #2: This is a correct understanding of the rulemaking process. This process allows for notice to providers prior to making changes and gives providers the opportunity to provide input prior to implementation. For more information, please see the response to comment #3.

COMMENT #3: Administrative rules for other prior authorized Medicaid services do not contain so much detail. Such details should be contained in agreements between CMHB and the utilization review contractor and not in rules.

RESPONSE #3: The department disagrees. Article II, section 8 of the Montana Constitution grants the public a right to expect governmental agencies to "afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision." Section 2-4-102, MCA defines a matter of significant interest to the public as an agency action "regarding matters that the agency knows

to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals." The authorization requirements certainly involve a substantial fiscal impact to a particular class of individuals. Therefore, in the interest of public participation, the department initiated this rulemaking procedure.

COMMENT #4: There is an apparent contradiction in proposed Rule III (37.87.808) and proposed Rule VII (37.87.903) with regard to prior authorization and a pass through authorization. Proposed Rule VII (37.87.903) states that prior authorization is required for targeted case management in excess of 120 units in a state fiscal year. Proposed Rule III (37.87.808) states that to be reimbursed TCM must be authorized by the department prior to the delivery of services.

RESPONSE #4: The department agrees and has clarified proposed Rule VII (37.87.903) to refer the reader to proposed Rule III (37.87.808) for further authorization steps. The initial authorization is in fact a pass through authorization and the number of units allowed is 120. However, the youth must be Medicaid eligible and must meet the definition of seriously emotionally disturbed (SED) in order to qualify for the prior or pass through authorization.

COMMENT #5: The department's proposal decreasing and limiting the number of case management services seems to imply that youth and their families are receiving more case management services than they require.

RESPONSE #5: The department did not intend the proposal to decrease or limit the number of necessary case management services available to qualified individuals. Proposed Rule III (37.87.808) actually increases the number of units authorized from 60 to 120 during the initial or pass through prior authorization.

COMMENT #6: We disagree with restrictions on case management services and have received suggestions in consumer satisfaction surveys that more staff and more one-to-one interaction with children is needed.

RESPONSE #6: In August 2007 the department adopted restrictions on TCM services because the department believed case managers were providing services outside the four core areas covered by federal and state regulations or were serving youth who were not SED. The proposed rules increase the number of units included in the initial or pass through authorization. Additional units of TCM service will be authorized if the documentation submitted supports a finding that TCM is medically necessary and within the four core areas. Targeted case management is not intended to be a one-to-one service. Direct care is important for youth with SED but it is not to be provided by targeted case managers.

COMMENT #7: The department's rationale states that "closer monitoring should be a cost effective way to assure efficient use of funds." We are very concerned that prior authorization of case management is not cost effective and results in barriers that limit access to care.

RESPONSE #7: The quoted rationale appears to be from proposed MAR Notice No. 37-407 published on May 24, 2007 by the Secretary of State, issue number 10, page 60. The current proposal simply relaxes the amount of monitoring required. An increase in the number of pass through units from 60 to 120 is being proposed along with a reorganization of administrative rules to a new chapter governing mental health services for SED youth. The department will discontinue use of prior authorization of TCM services if it does not prove to be an effective management tool. In state fiscal year 2007, youth received an average of 131 units of TCM. In state fiscal year 2008, youth received an average of 126 units of service. The number of youth served in 2008 decreased by 112 from the previous fiscal year. The department has not seen a substantial decrease in TCM cost or utilization and believes additional time is needed to evaluate the effectiveness of prior authorization requirements.

COMMENT #8: We are concerned about the elimination of TCM services to youth in residential care. How does the state think discharge planning will occur?

RESPONSE #8: 42 CFR 482.43 requires Psychiatric Residential Treatment Facilities (PRTF) to provide discharge planning. PRTFs must identify at an early stage all patients who are likely to suffer adverse health consequences without an adequate discharge plan, must comply with standards for discharge planning and evaluation, must provide the patient with the discharge evaluation (plan), and must consider the patient's need for post PRTF services and the availability of those services. It must also include an evaluation of the patient's capacity for self-care and of ability to return to the same environment. The discharge plan must be completed in time for appropriate arrangements for post PRTF care to be made without unnecessary delays in discharge.

Also, Joint Commission on Accreditation of Healthcare Organizations (JCAHO) standards require that treatment facilities have a process to address the needs for continuing care, treatment, and services after discharge or transfer of a patient. JCAHO scores facilities on how well they meet this performance standard with regard to timely notification of clients, identification of clients' continuing care needs, coordination with all members of the discharge planning team, reasons for discharge, arrangements or assistance to a patient's family in accessing services needed after discharge, and providing discharge instructions that are clear to the patient and those responsible for providing continuing care.

The department has determined it unnecessary for a TCM to duplicate, supersede, or supplement PRTF duties in meeting the discharge planning standards. The department considers the cost of providing these services when it sets the Medicaid PRTF reimbursement rate.

COMMENT #9: Does the state really believe residential providers will contract for community case management services with money out of their residential rate?

RESPONSE #9: Yes. Each in-state PRTF receives a facility specific ancillary rate that includes some reimbursement for TCM services from the base year (federal fiscal year 2007). If an in-state PRTF's expenses for TCM services (along with other ancillary and medical services) are at least 105% higher than the base year, the department will cost settle with the PRTF at the end of the state fiscal year. The PRTF may also choose to contract with an MHC for TCM services to a youth while in their facility. Again, if those TCM expenses (along with other ancillary and medical expenses) are at least 105% above the base year, the department will cost settle with the PRTF, dollar for dollar. See the adoption of MAR Notice 37-448 published by the Secretary of State on November 6, 2008, issue number 21, page 2360, for more information.

COMMENT #10: We know from experience with managed care in the 1990s that prior authorization of case management only results in disrupted care, barriers to access, and harm to clients.

RESPONSE #10: The department has contracted for utilization review (UR) of case management. The UR contractor will determine if TCM services are medically necessary and whether the youth meets the definition of SED. The department's intent is not to disrupt care to individuals in need of service, but to align TCM services with the four core areas allowed by state and federal regulations. The additional units of service being added to the initial or pass through prior authorization should reduce the number of disruptions that occur.

COMMENT #11: Proposing to manage the utilization of the "first line of defense" in order to decrease its availability seems antithetical to system of care principles.

RESPONSE #11: The department does not intend to decrease the availability of case management services to qualifying SED youth. The purpose of initial or pass through authorization is to respond to an increase in service utilization and to verify the SED status of the youth being served. This will ensure that case management services comply with state and federal regulations.

COMMENT #12: We are asking for a clear accounting of the number of dollars saved through limiting case management vs. the increased cost to contract with First Health.

RESPONSE #12: The department will make available to TCM providers and other members of the public an accounting of the expenditures to First Health upon request.

COMMENT #13: We are asking for a clear accounting of the increased costs of residential care associated with inadequate TCM services in the community.

RESPONSE #13: Montana is not showing any increase in costs associated with PRTF placement. The average number of youth in a PRTF for 2007 was 126. The average number of placements for 2008 was 107.

COMMENT #14: Are crisis and sub-crisis management still elements of case management services?

RESPONSE #14: Case management services must be provided within the four core areas of case management. This means the case manager does not respond directly in a crisis situation but rather intervenes by coordinating, referring, and monitoring to alleviate the crisis.

COMMENT #15: I would like to have some examples of formats for the assessment, review, and treatment plan organized into a coherent document that would meet or exceed the expectations of the state.

RESPONSE #15: This comment is outside the scope of the proposed rule amendments. The requested information is provided in a policy manual, contract, or First Health manual. First Health authorization forms and their manual are currently under revision to be more coherent with regard to case management criteria. The forms were recently submitted to case management providers for input prior to finalization.

5. The department intends for the adoption, amendment, and repeal of these rules to be applied retroactively to January 1, 2009. There will be no detrimental effects resulting from the retroactive application.

/s/ John Koch
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State February 17, 2009.